

Policy on Conflicts of Interest

A conflict of interest is a situation in which a person or organisation is involved in multiple interests, financial or otherwise, and serving one interest could involve working against another.

The PEB Governance Board has collective responsibility for monitoring the operation of this policy, ensuring that it is disseminated to all members of the PEB (which includes operational staff and members of the Governance Board itself), providing advice and guidance to members on its operation and, where necessary, seeking external guidance.

What is a Conflict of Interest?

Decision making processes frequently require that decision maker(s) balance competing interests. A conflict of interest arises when a decision maker is subject to an additional interest (the conflicting interest) which is not or should not be germane to the decision being taken but which has the potential to influence the judgement of the decision maker.

Mere assertion of not being influenced does not dispose of a conflict of interest, because influence can be sub-conscious. The test is that of a knowledgeable bystander - would he perceive a potential for a conflict of interest.

Thus, it is important to note that the term 'conflict of interest' includes a potential conflict of interest.

Many organisations have conflict of interest policies which focus on the role of individuals in their decision making processes and seek to manage the conflict of interest which may result from the relationship of those individuals with outside persons and organisations. However, the PEB as an organisation is potentially subject to pressures from stakeholders which are themselves organisations and which can affect the operation and existence of the PEB as an assessment and awarding body. Response to those pressures may affect the judgement of the PEB as an organisation as well as the judgement of individuals within the PEB. Accordingly, this policy and the accompanying Register seek to identify and deal with conflicts of interest at both the individual and the organisational level.

Dealing with a Conflict of Interest

This can be summarised as: acknowledge; manage; prohibit.

In many instances it is not possible to eliminate a conflict of interest. In that circumstance it is important to:

1. acknowledge openly the conflict of interest,
2. to consider what, if any, mitigation might be applied to manage the conflict and to weigh the likely impact of the conflict influencing a decision, and, if necessary,
3. prohibit persons affected by the conflict from taking part in the relevant decision making process.

Patent Examination Board

There are conflicts of interest common to individuals in each of the respective divisions (Operational, Examination Committee, and Governance Board) of the PEB and so it is possible to formulate mitigation policies which are likely to be applied commonly across a division. Nevertheless, it is incumbent on individuals to consider their own personal circumstances and ensure that all conflicts of interest are reported.

The appendices to this policy set out guidelines for managing certain types of conflict of interest. However, in each specific case, the appropriateness of the general guideline must be considered.

Register of Conflicts of Interest

Over time, individuals and organisations can lose sight of actual and potential conflicts of interest. It is, therefore, important to maintain a Register of conflicts of interest. The Register needs to identify the conflict, identify what areas of activity are relevant, any mitigation which is put in place, and when the conflict is no longer germane. The Register must be kept up to date, reviewed regularly by the PEB Governance Board and it must be of manageable size.

The register should be open to PEB operational staff and the Governance Board, as this will assist individuals in identifying their own conflicts of interest which should be registered. It will be tabled, updated and reviewed at every PEB GB meeting.

Examiner conflicts of interest are required to be reported and will be monitored on a series by series basis. The scripts of any candidate known to an examiner will, as far as is possible, be marked by another examiner, thereby removing the conflict. Where this is not possible the conflict will be reported at the awarding meeting and subject to scrutiny in accordance with the Awarding meeting agenda.

Reporting a Conflict of Interest

Transparency of the Register is itself an important factor in mitigating a conflict of interest. However, there are circumstances when a conflict of interest is such that an individual or organisation involved wishes it to be kept confidential. That wish must be respected, otherwise it will lead to non-reporting of a conflict of interest. In that circumstance, the conflict should be reported direct to the Chair of the PEB Governance Board (rather than to the Operations Manager) who will treat the matter in confidence, seek external advice if appropriate, and decide what action, if any, is to be taken and what concerns, if any, can be reported to the Governance Board or other members of the PEB.

Individuals are advised to err on the side of caution - if you are considering whether something might be a conflict of interest, then report it.

PEB Governance Board
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Appendix I

Organisational Conflicts of Interest

The Role of the PEB

The primary role of the PEB is to provide qualifying examinations for persons seeking entry on to the Register of Patent Attorneys under the Patent and Trade Mark Attorney Qualification and Registration Regulations [2009] of the Intellectual Property Regulator (IPReg).

IPReg

To fulfil its primary role, the PEB must be an accredited examination agency providing Foundation Certificate and Final Diploma Level examinations (Qualifying Examinations) under the IPReg Examination and Admission Rules 2011.

There is potential for IPReg itself to seek to influence the operation of the PEB at various levels. So far as that is to ensure that the PEB works with IPReg to assist IPReg in fulfilling its published regulatory role (particularly with respect to content and standards of the Qualifying Examinations), the influence would seem to be right and proper.

It is important that any decisions by the PEB and its members which are potentially influenced by the PEB's perception of its relationship with IPReg are properly documented.

Accordingly, the Governance Board considers that it is of primary importance to ensure that its dealings with IPReg are open and, in particular, that any changes to the content or standard of the Qualifying Examinations are the result of proper notification or consultation.

CIPA

The Chartered Institute of Patent Attorneys (CIPA) is a representative body for, inter alia, UK Registered Patent Attorneys and the PEB is a committee of CIPA.

Dialogue between CIPA and IPReg during the setting up of the PEB indicated that the operational independence and the governance of the PEB were of crucial importance in the decision to grant Examination agency status. In particular, the PEB must not be influenced by CIPA.

For reasons of operational economy, the PEB is a Committee of CIPA and CIPA carries the financial risk of the PEB.

Also, the great majority of the PEB Examination Committee and a minority of the PEB Governance Board are members of CIPA.

Thus, there is potential for CIPA to influence the PEB on behalf of CIPA and its members.

A number of fences have been put in place to help ensure the operational independence of the PEB:

CIPA Council have resolved¹ that:

1. The PEB is to be operationally and financially independent of CIPA Council.
2. The PEB will be self-funding, apart from those start up costs which are met by CIPA.
3. The PEB Governance Board has a majority of lay members, a majority of its lay members must be present at any meeting for it to be quorate, and the Chair must be selected from the lay members.
4. The PEB operational staff are employed by CIPA, but their employment contracts stipulate that when engaged on work for the PEB they will take instructions only from the PEB Governance Board.

Whilst, as with IPReg, the PEB is plainly open to dialogue with CIPA on matters relating to PEB assessments and standards, it is important that any such communication is open and its influence on any PEB decisions is properly recorded.

¹ CIPA Council Resolution of 7 August 2013

Employers, Students, Informals

Students and their employers are the customers of the PEB and so their concerns are always a factor in any decision of the PEB and so it is not apparent that there is any likelihood of a conflict of interest arising from dealings with them at a generic level.

The Informals is a representative body for student members of CIPA. . The Informals committee is a source of information and feedback for the PEB. It is important that any communication with the Informals is open and its influence on any PEB decision is properly recorded.

Appendix II

Individual Conflicts of Interest

Some individual conflicts of interest are generic to a person's role in the PEB and so far as possible the recording and mitigation of such conflicts should be managed.

Operational Members

Operational members are employed by CIPA.

Appointment of Consultants

Operational members are responsible for engaging outside consultants and should follow the agreed policy for this process. Any departure from the policy should be reported to the Chair of the Governance Board.

Appointment of Examination Committee Members

Operational members are responsible for engaging examination committee members and should follow the agreed policy for this process. Any departure from the policy should be reported to the Governance Board.

Examination Committee Members

Examination committee members enter into written contracts with CIPA.

Many examination committee (EC) members have sight of examination papers during the drafting stage and are also responsible for marking answer scripts and moderating results. Although paid for their services, the motivation of the EC members is primarily one of 'giving something back' to the profession.

EC members are often individuals who have an interest in training. As such, they will likely train students at their place of employment and also may deliver training courses. This presents two clear risks:

1. The risk that knowledge of the content of an examination paper will influence the delivery of training in the lead up to an examination.
2. The risk that an answer script will be marked unfairly (even if subconsciously so) if the examiner knows the candidate.

Some examination bodies deal with this by prohibiting the examiner from taking part in any such training activities. Other bodies, particularly academic bodies, rely on the integrity of the examiners - for example when the examiner is delivering a course and then examining on it. However, in the latter case, the 'conflict' applies equally to all students on a course.

EC members need to have a demonstrable experience and interest in the training and qualification process in order to have credibility and in order to contribute fully to the examination process. The patent profession is a small profession. If EC members were prohibited from taking part in training

it would severely limit the ability of the PEB to recruit EC members from within the profession and could result in an EC which is seen as being out of touch.

Thus (as was the case under the Joint Examination Board), EC members are allowed to train students personally and to give training courses.

The likelihood of an EC member consciously coaching a candidate for a prepared examination paper is considered to be very small. The consequences for the EC member's professional career would be severe. Nevertheless, precautions should be taken.

The EC members enter into a written contract with the PEB which requires, inter alia, that any actual or potential conflict of interest is notified to the PEB. This includes notifying the PEB of any candidate who has been trained personally by the EC member and providing a list of any training course delivered by the EC member (but not a list of persons receiving a recorded webinar lecture given by the EC member)².

The following mitigating procedures apply to all EC members:

1. An EC member will notify the PEB of any candidate being trained personally by the EC member.
2. When an EC member delivers a training course in the year leading up to an examination, the names of the attendees will be sought by the PEB, along with a copy of the course materials³. Where training is delivered to student members of a large firm, it may be more appropriate to identify the firm itself.
3. When an EC member delivers a lecture relating to an examination, the PEB offers an (optional) checking or materials service to any examiner who would like an opinion on the materials they intend to use.
4. Candidate names are not revealed to EC members. Answer scripts are only identified by a unique 5 digit candidate number.
5. In the case of the Foundation Certificate Examinations which are marked by a single examiner, the answer scripts for candidates named in (1 and 2) will be reviewed by the Chief Examiner, or by another examiner if the conflict is with the Chief Examiner.
6. In the case of Final Diploma Examinations (which are double blind marked), the answer scripts for candidates named in (1 and 2) will be allocated to different examiner(s).
7. All examiners are subject to confidentiality clauses in their contract.
8. All examiners are issued with instructions which contain an appendix entitled: *Advice and Guidance for Examiners who teach, train or mentor*.

² Informals lectures are recorded and distributed electronically so it is not practicable to track attendees after the live event.

³ The main problem here is that if a paper includes a topic which is rarely covered - care must be taken to ensure that it is not suddenly covered or emphasised by the lecturer. The proper mitigation here is to ensure that there is rotational coverage of the syllabus.

Governance Board Members

Governance Board members have entered into written contracts with CIPA.

The risk register is reviewed at each quarterly meeting of the Governance Board and so issues of actual or potential risk for GB members are inherently more open to view.

GB Patent Attorney Members

The GB believes that it is important to the reputation of the PEB, particularly among members of the patent attorney profession, that there are patent attorney members on the GB and that they take as full a part as possible in the discussions and decisions of the GB.

On matters relating to the assessment of individuals, the risks are similar to those for EC members because the GB members will have access to examination papers before they are sat.

Although GB members do not (ordinarily) mark examination papers, they may be called upon to discuss an individual outcome. Whilst such discussions will normally be anonymised (i.e. the candidate will not be known to the GB), the GB member should mention if he/she can identify the candidate or firm concerned so that the GB can consider whether to exclude the GB member from the discussion.

Additionally, where the GB Patent Attorney member provides training or lectures, the information outlined above for EC members will be also provided by the GB member.

GB Patent Attorney members may be members of other CIPA committees and such memberships should be identified on the risk register.

Where a GB Patent Attorney member has been a member of CIPA Council or IPReg, this should be identified on the risk register.

Current and former employers or partnerships of the GB Patent Attorney member should be recorded on the risk register.

Where the PA member is attending an awarding meeting, candidates from their firm or otherwise declared to the PEB, will be identified (by number) for scrutiny in accordance with the awarding meeting agenda.

GB Lay members

Lay members are less likely to have personal knowledge of candidates or firms. Nevertheless, the same considerations as for patent attorney members can be applied to the lay members. In relation to the above, the mitigation and/or prohibition can be determined and recorded by the GB at the point of discussion.

Other Awarding Bodies

Inherently, the PEB is a commercial organisation (it is required at least to break even on its finances). For this reason, GB members should identify any association with other awarding bodies in the intellectual property field.